

November 21, 2016

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: MB Docket No. 16-42; CS Docket No. 97-80. *Expanding Consumers' Video Navigation Choices; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices***

Dear Ms. Dortch:

I am writing on behalf of Oracle<sup>1</sup> to share our serious reservations regarding the Commission's proposal in the above-referenced proceeding.<sup>2</sup> We applaud the Commission for moving away from the initial Notice of Proposed Rulemaking approach and recognizing that the future of video distribution is in applications, primarily mobile apps. However, there is reason to believe that some companies that would benefit from largely unfettered access to multichannel video programming distributor ("MVPD") information and preferences may not protect consumers' privacy in the same manner that cable and satellite providers are obligated to do. This projected lack of parity is particularly concerning with respect to Google, a company largely founded on invasive data collection and aggregation techniques bolstered by its tight control of the Android operating system. As further discussed below, Google's regulatory push for access to MVPD content and subscribers is not surprising, given that Google's current ability to track virtually every movement of a consumer's day through an Android phone easily could be merged with a new ability to serve targeted ads and further track consumer preferences

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<sup>1</sup> Oracle offers an integrated array of applications, databases, servers, storage, and cloud technologies to empower modern business. Oracle provides a wide choice of software, systems, and cloud deployment models – including public, on-premises, and hybrid clouds – to ensure that technology flexes to the unique needs of a business. More than 420,000 customers across 145 countries have harnessed Oracle technology to accelerate their digital transformation. In the video space, Oracle's Java provides an open, secure, and easy to implement solution for video delivery applications on emerging platforms such as mobile devices and in browsers, as well as traditional platforms such as set-top boxes and TVs.

<sup>2</sup> Fact Sheet: Chairman Wheeler's Proposal to Increase Consumer Choice & Innovation in the Video Marketplace (rel. Sept. 8, 2016), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0908/DOC-341152A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0908/DOC-341152A1.pdf) ("Fact Sheet").



through an Android-powered set-top box or software.<sup>3</sup> To protect against this, at a minimum the agency should ensure that all video consumers' privacy is treated similarly on every platform, whether they lease a cable or satellite set-top box or use their own hardware or software to view MVPD programming.<sup>4</sup>

More broadly, however, the Commission should think extremely carefully before handing Google the keys to the MVPD castle. Privacy concerns will not be assuaged even under a certification program or other compliance mechanism.<sup>5</sup> Nor would such a program or mechanism that addresses copyright protection be sufficient, given Google's troubling history of self-serving disregard for others' intellectual property.<sup>6</sup>

Most concerning of all is the false perception that the Commission's proposal would eliminate an MVPD "gatekeeper" – in fact, the proposal would merely replace a regional distributor, constrained by significant regulation, with a global, data-hungry, market-dominant Google, largely outside the FCC's authority.<sup>7</sup> While Google purports to offer Android as a free

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<sup>3</sup> See, e.g., Amy Kraft, *Google is spying on K-12 students, privacy advocates warn*, CBS News (Dec. 29, 2015), <http://cbsn.ws/1OwMCj2>; *Mission Creep-y: Google Is Quietly Becoming One of the Nation's Most Powerful Political Forces While Expanding Its Information-Collection Empire*, Public Citizen, Nov. 13, 2014, <http://bit.ly/1qRXib0>; John Timmer, *EU seeks Street View picture purge*, Ars Technica, Feb. 26, 2010, <http://bit.ly/2fWEytk>.

<sup>4</sup> See, e.g., Comments of the Electronic Privacy Information Center ("EPIC"), MB Docket No. 16-42, CS Docket No. 97-80 (filed Apr. 22, 2016); see also Fed. Trade Comm'n ("FTC"), *Protecting Consumer Privacy in an Era of Rapid Change*, FTC Report at 13 (Mar. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> (advocating for a technologically neutral approach to privacy regulation).

<sup>5</sup> See, e.g., Letter from Lawrence E. Strickling, NTIA, to Chairman Tom Wheeler, FCC, MB Docket No. 16-42, at 5 (Apr. 14, 2016) (observing that the original proposed certification approach "leaves important questions to be addressed – most importantly, who will ensure compliance with a certification and through what legal authority").

<sup>6</sup> Oracle's own experience is illustrative of Google's disrespectful approach to intellectual property. See *Oracle America v. Google*, Complaint for Patent and Copyright Infringement and Demand for Jury Trial, Case No. pa-1418106 (Aug. 12, 2010).

<sup>7</sup> See e.g., *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, FCC 16-148 (rel. Nov. 2, 2016) ("Broadband Privacy Order"), Statement of Commissioner Ajit Pai (dissenting) at 2 ("Privacy Order Pai Dissent") ("Nothing in these rules will stop edge providers from harvesting and monetizing your data, whether it's the websites you visit or the YouTube videos you watch or the emails you send or the search terms you enter on any of your devices."); see also Peter Swire, Associate Director, The Institute for Information Security & Privacy at Georgia Tech, et al., Working Paper, *Online Privacy and ISPs: ISP Access to Consumer Data is Limited and Often Less than Access by Others*, WC Docket No. 16-106, at 24-25 (filed May 27, 2016); Comments of EPIC, WC Docket No. 16-106 at 16 (filed May 27, 2016) ("The FCC describes ISPs as the most significant component of online communications that poses the greatest threat to consumer privacy. This description is inconsistent with the reality of the online communications ecosystem. Internet users routinely shift from one ISP to another, as they move between home, office, mobile, and open WiFi



and open platform, Google has created a proprietary Android world in which Google derives substantial economic benefit from advertising and – perhaps even more importantly – obtains access to huge amounts of personal data through search, location tracking, and other activities. The Android license includes significant demands that severely constrain OEM developers, and by controlling the distribution mechanism for apps both developers and consumers are subject to Google’s power, ironically, directly curtailing consumer choice in a manner directly contrary to the goals of Section 629.<sup>8</sup>

***Google’s Access to MVPD Subscribers Presents Major Consumer Privacy Concerns.***

The Commission’s proposal gives rise to concern that third parties like Google would not protect MVPD subscribers’ information and preferences in the same manner that cable and satellite providers are required to do. The fact sheet simply says that the rules would require privacy protections to be preserved, no matter what device is used, but it is not clear how this would be effectuated or enforced.<sup>9</sup> Because manufacturers and app developers lack experience with the Commission’s cable and satellite privacy rules, even a well-intentioned third party not historically subject to FCC regulation could jeopardize consumers’ privacy. This danger increases with third parties known for invasive data collection and aggregation techniques, such as Google.<sup>10</sup> Moreover, because of Google’s role in Android, Google will have the ability to collect and use information about any MVPD subscriber using an Android device, not just subscribers who choose to rely on a Google app or Chromecast. Specifically, every consumer with an Android device must use a Google Play ID to purchase apps through the Google Play store (formerly the Android Market) effectively a consumer’s only method for installing new apps.. Thus, any MVPD app written for Android would require subscribers to share significant amounts of personal data with Android (*i.e.*, with Google), particularly if the apps are forced to

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services. However, all pathways lead to essentially one Internet search company and one social network company.”).

<sup>8</sup> 47 C.F.R. § 549.

<sup>9</sup> Fact Sheet at 3.

<sup>10</sup> See, e.g., Agreement Containing Consent Order, In the Matter of Google, Inc., File No. 102-3136 (2011),

<https://www.ftc.gov/sites/default/files/documents/cases/2011/03/110330googlebuzzagreeorder.pdf> (resolving the FTC’s claims that Google had violated Section 5 of the FTC Act by sharing user information with its nascent Google Buzz social network without obtaining adequate permission); Order Approving Stipulated Order for Permanent Injunction and Civil Penalty Judgment, United States of America v. Google, Inc., No. CV 12-04177 SI, (S.D.Cal. 2012),

<https://www.ftc.gov/sites/default/files/documents/cases/2012/11/121120googleorder.pdf> (imposing a \$22.5 million civil penalty to settle the FTC’s allegations that it had violated the Google Buzz Consent Order by circumventing the Safari browser’s default cookie-blocking setting in order to track users’ online behavior for its DoubleClick advertising network); Decision and Order, In the Matter of Google, Inc., File No. 122-3237 (2014),

<https://www.ftc.gov/system/files/documents/cases/141205googleplaydo.pdf> (imposing \$19 million fine arising from the FTC’s claims that Google had violated Section 5 of the FTC Act by failing to obtain parents’ informed consent to in-app charges incurred by their children).



fully replicate the set-top box experience.<sup>11</sup> In addition to smartphones, Google is now bringing Android app capabilities to its Chromebook laptops, to newer TVs through Chromecast (or any successor video product that takes advantage of new Section 629 rules), and directly to “smart TVs” using Android as an operating system.<sup>12</sup> As the owner of an app store, Google also obtains revenue from every transaction through an app, unlike open platforms.<sup>13</sup>

In contrast to devices using other technologies, every time a consumer “wakes” an Android device, the device sends and receives over 35 data requests. Among these requests, the device transmits to Google its (i) location, (ii) Google Play ID, and (iii) Mobile ID. In addition, Google’s recent decision to link its DoubleClick data into its profiles multiplies Google’s ability to aggregate specific consumer data in a way that is orders of magnitude more pervasive than MVPDs and other technology companies such as Oracle.<sup>14</sup> Thus, a consumer with an Android device could spend all day being tracked by Google (not subject to the FCC’s cable or broadband privacy rules) and then sit down to watch video programming in the evening through an MVPD app, to be served with Google targeted advertising and even search results based on the personal data it has obtained about the consumer over the course of the day.<sup>15</sup> This level of intrusion is in striking contrast to the protections of the FCC’s cable and satellite privacy rules, and it should not be acceptable to the Commission or consumers.<sup>16</sup> It is particularly troubling in the context of the Commission’s recent broadband privacy rules (not yet published), which imposed significant new burdens on ISPs, widening the chasm between various participants in the ecosystem.<sup>17</sup>

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<sup>11</sup> Android Open Source Project, Licenses, Android.com, <https://source.android.com/source/licenses.html#android-open-source-project-license>.

<sup>12</sup> See, e.g., Jon Fingas, *Chromebooks now have an easy time running Android apps*, Engadget, Sep. 25, 2016, <http://engt.co/2cW9kFI>; Kwame Opam, *Google officially unveils Android TV*, The Verge, Jun. 24, 2014, <http://bit.ly/1jj0Vmy>.

<sup>13</sup> See Google Inc., Developer Console Help, Transaction Fees, <https://support.google.com/googleplay/android-developer/answer/112622?hl=en> (last visited Nov. 16, 2016).

<sup>14</sup> See, e.g., Google “Quietly” Changes Privacy Policy, Matches Tracking Data and User ID, Electronic Privacy Information Center, Oct. 25, 2016, <http://bit.ly/2fXe9KK>; Suzanne Monyak, *Google Changed a Major Privacy Policy Four Months Ago, and No One Really Noticed*, Slate, Oct. 21, 2016, <http://slate.me/2ePJfbF>; Anmol Sachdeva, *Google quietly updates privacy policy to drop ban on personally identifiable web tracking*, The Tech Portal (Oct. 21, 2016), <http://bit.ly/2dIvcmY>.

<sup>15</sup> It is therefore unsurprising that Google, while supporting opt-in consent requirements upon Internet service providers, opposed the same opt-in consent requirements for aggregators of web browsing information. See Letter from Austin C. Schlick, Director, Communications Law, Google Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-106 at 1 (filed Oct. 3, 2016).

<sup>16</sup> See, e.g., 47 U.S.C. §§ 551, 338(i).

<sup>17</sup> Indeed, Google concedes that the regulatory space is asymmetric, and it vaguely suggests that the FCC can still protect consumer privacy from abuses by bad actors with its data aggregation capabilities by “work[ing] closely with the FTC” under the FTC’s existing privacy regime. See Comments of Google, Inc., MB Docket No. 16-42, CS Docket No. 97-80 at 7-8 (filed Apr. 22, 2016) (discussing “the limitations on the FCC’s jurisdiction under Section 629 of the Communications Act which prevent it from applying the rules that apply to ‘cable operators’ and ‘satellite carriers’ to suppliers of devices”).



Google is the clear winner in both proceedings if ISPs face new restrictions and requirements that do not apply to Google, and at the same time Google increases its access to MVPD subscriber data.<sup>18</sup> This result effectively would hand Google the market to the obvious detriment of consumers.

***Cross-Platform Search Requirements Should Not be Limited to MVPDs.*** We understand that the Commission's proposal also addresses search issues and would require MVPDs to enable cross-platform search. However, it appears that no corollary requirement would be imposed on third-party manufacturers or developers, creating a significant imbalance that unfairly penalizes MVPDs and, ultimately video subscribers. Our market research and projections show that online search is evolving from a list of multiple on-screen search results to a single, audible, winner-take-all result in response to voice search. Given Google's dominance in the search market, there is no doubt the company immediately would integrate its own search capabilities into an MVPD offering with no option for the consumer to choose their search provider. Therefore, Google will be permitted to exert enormous influence by accessing multitudes of customer data to identify and promote preferred search results. This influence would be even further increased through voice search, with the likely result each time being a Google offering.

***Google Should Not Reap the Benefits of MVPD Native Apps.*** If the Commission moves forward with its proposal to require MVPDs to deliver native apps to "widely deployed platforms," it should specify that Android is not one of these platforms. While this may seem counterintuitive because many devices run on Android, the Commission can ensure these devices have access to MVPD apps without creating a monetary and data windfall for Google alone. In Google's proprietary Android world, Google derives significant economic benefit from advertising, search, location tracking, and other activities. Android could have remained an open, interoperable platform, but Google chose instead to lock developers into Android. Not only did Google create an environment where apps are not interoperable with the underlying Java ecosystem, Google also ties developers to proprietary APIs which prevent developers from supporting alternative versions Android. In sum, developer applications written for Android cannot run in environments other than Android.<sup>19</sup> Google thus uses the Android license to control, define, and shape an entire ecosystem, stopping competitors from permissibly modifying Android to offer their own iterations. It thus is ironic that Google has pushed for this rulemaking proceeding under the guise of increasing consumer choice and innovation, when native Android MVPD apps would do just the opposite. The Commission should not designate Android as a "widely deployed platform" and instead rely on a truly open and interoperable alternative that would facilitate a more competitive marketplace and offer greater benefits to consumers.

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<sup>18</sup> See Broadband Privacy Order (imposing privacy rules on broadband Internet access service providers but not "edge" providers, such as Google); Fact Sheet at 1-3 (proposing to force MVPDs to develop apps for widely deployed platforms without proposing *any* requirements on manufacturers and app store owners who do not voluntarily opt-in to the new app regime.).

<sup>19</sup> See, e.g., Android Developers, Device Compatibility, <https://developer.android.com/guide/practices/compatibility.html> ("a device is 'Android compatible' only if it can correctly run apps written for the Android execution environment") (emphasis omitted) (last visited Nov. 16, 2016).

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Oracle would be happy to meet with Commission staff to address any questions you may have about these concerns. Thank you very much for your consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. Glueck', with a stylized flourish at the end.

Kenneth Glueck  
*Senior Vice President*  
*Office of the CEO*  
*Oracle Corporation*

cc: Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Rielly  
Howard Symons  
Bill Lake